

E-Filed 12/5/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

INICOM NETWORKS, INC., Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

NVIDIA CORPORATION, et al.,

Defendants.

Case Number C 08-4332 JF (PVT)

ORDER VACATING HEARING ON
MOTION TO CONSOLIDATE CASES

[Re: Docket No. 32]

On December 2, 2008, Defendant NVIDIA Corporation ("NVIDIA") filed a motion to consolidate six actions currently pending in this district¹ and two actions expected to be transferred to this district pursuant to the stipulation of the parties.² NVIDIA noticed its motion for hearing on January 23, 2009 before the undersigned judge.

¹ *Nakash v. NVIDIA Corp.*, Case No. C 08-4312 JW (HRL); *Inicom Networks, Inc. v. NVIDIA Corp., et al.*, Case No. C 08-4332 JF (PVT); *Feinstein v. NVIDIA Corp.*, Case No. 08-4596 RS; *Cormier v. NVIDIA Corp.*, Case No. C 08-5082 HRL; *National Business Officers Ass'n, Inc. v. NVIDIA Corp., et al.*, Case No. C 08-5179 HRL; and *West v. NVIDIA Corp.*, Case No. C 08-5217 PVT.

² *Olivos v. NVIDIA Corp., et al.*, Case No. C 08-3895 LDW (ETB) (E.D.N.Y.); and *Sielicki v. NVIDIA Corp., et al.*, Case No. C 08-802 SS (W.D. Tex.).

1 Under this Court's Civil Local Rules, an application to relate one or more cases must be
2 submitted to the judge assigned to the earliest filed (or "low number") case. Civ. L. R. 3-12(b).
3 The Civil Local Rules do not expressly address motions to consolidate; however, as a matter of
4 practice, the judge assigned to the low number case considers the issue of consolidation in
5 conjunction with the issue of related case status. Here, the earliest filed case is *Nakash v.*
6 *NVIDIA Corp.*, Case No. C 08-4312 JW (HRL), assigned to Judge James Ware. Accordingly,
7 NVIDIA's motion to consolidate should have been filed in *Nakash* for determination by Judge
8 Ware.

9 In its moving papers, NVIDIA acknowledges that Case No. C 08-4312 JW (HRL) is the
10 low number case, but requests an exception to the practice described above on the ground that the
11 undersigned judge would move the case(s) along more rapidly than would Judge Ware. NVIDIA
12 represents that while Court staff has indicated that the undersigned judge would schedule any
13 appropriate motions for hearing in mid-January 2009, Judge Ware would not schedule such
14 motions until March 2009.

15 While judges certainly may agree to the reassignment of a case or cases notwithstanding
16 the Court's ordinary practice, Judge Ware's orders issued on December 3, 2008 make clear that
17 he is not be amenable to such reassignment here, at least at the present time. In his Order
18 Granting In Part And Denying In Part Motions To Relate Cases, filed in the instant case as
19 docket number 37, Judge Ware expresses concern that the parties may be judge-shopping, and
20 states expressly that he will not transfer any of the subject cases to the undersigned judge. That
21 order also expressly addresses the issues of related case status and consolidation that are raised in
22 the instant motion. A Related Case Order, filed in the instant case as docket number 38,
23 reiterates Judge Ware's conclusions regarding the related case issue. In light of Judge Ware's
24 orders, the undersigned will vacate the hearing on NVIDIA's motion to consolidate, and will
25 direct the parties to raise any and all issues of related case status and consolidation before Judge
26 Ware.

ORDER

- (1) The hearing on Defendant NVIDIA's motion to consolidate cases is VACATED;
- (2) The parties shall direct any future motions regarding related case status or consolidation to Judge Ware; and
- (3) The instant case, which has not been related to or consolidated with the matters pending before Judge Ware, remains set for a Case Management Conference before the undersigned judge on January 30, 2009 at 10:30 a.m.

DATED: 12/5/08

JEREMY FOGEL
United States District Judge

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